

**Harpswell Planning Board Meeting
Minutes of September 17, 2003**

**Approved 10-15-03
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Attendance: Sam Alexander - Chairman, John Papacosma - Vice-Chairman, Howard Nannen, Roland Weeman – Associate, Noel Musson - Planner, and Amy E. Ferrell – Planning Assistant. (Dee Carrier arrived at 6:45 pm and James Carignan – Associate arrived at 7:00 pm)

Chairman Alexander appointed Roland Weeman as voting member.

Introductions and Pledge of Allegiance - The meeting had been advertised in the Times Record, videotaped, broadcast live on Harpswell TV, and recorded. Chairman Alexander called the meeting to order at 6:30 P.M., introduced above Board members and staff and led the pledge of allegiance.

Review of Agenda and Procedure - Chairman Alexander reviewed general Board procedures and the agenda for the evening

Approval of Minutes - The Board reviewed the minutes. **Motion – To approve the minutes of August 20, 2003 with amendments. (Motion by Alexander and seconded by Papacosma - Carried 4-0.**

Site Visits Review - Chairman Alexander reported that site visits to three of the areas to be discussed at this evening's meeting had taken place on Monday September 15 with all Board members and Noel Musson, Planner in attendance.

03-09-01 David & Leslie Bradbury and Paul & Marcia Johnson, Amendment to Previously Approved Subdivision – Adjust Boundary Approximately 100 Feet to the East, Interior, Tax Map 51-27, Hidden Pond Road, Cundy's Harbor, Harpswell.

Applicant Presentation – Paul Johnson, applicant, explained their request to move the west boundary line of lot #27, (a property owned jointly by all the applicant's) 100 feet to the east, adding approximately 24,000 square feet to lot #25 (a property owned by the Bradbury's only). Mr. Johnson explained this subdivision was part of the Ledgeview Association which was formed from an original 80 acre parcel. Under their protective covenants of this association it states: "If two or more parcels are combined in a single ownership, they may be resubdivided only in accordance with the lot lines shown on said Plan. No subdivision of any individual parcel, shall be permitted at any time provided, however, that any parcel may be divided between the owners of abutting parcels."

Board Questions and Discussion - Board determined that each lot would remain conforming with over 2 acres of land. Planner Musson stated that due to section 8.11 Plan Revisions after Approval, of the Subdivision Ordinance the applicants needed to come before the Board. Weeman expressed concern over the location of the property markers and stated they should be placed on the property line.

Public Comment – None

Board Discussion and Votes - Nannen stated the amended lot lines needs to be recorded at the registry of deeds as an amended subdivision plan. Planner Musson noted the Notice of Decision will have to be recorded and that the Planning Office along with the Codes and Assessing Office can provide assistance in amending the subdivision plan if it is needed. **Motion - The Board moves to approve the proposal with the condition that permanent property markers are placed and the amended subdivision plan is recorded at the Cumberland County Registry of Deeds. (Motion by Alexander and seconded by Papacosma; carried 5-0)**

03-09-02 Jacques Dostie, Site Plan Review - Wharf Approval; Proposed 16' x 16' dock, an 8' x 12' shed, a 5' x 32' fixed ramp, a 4' x 36' pivot ramp, and a 10' x 16' float for a Charter Fishing Business, Commercial Fishing I, Tax Map 38-44, Gun Point Road, Great Island, Harpswell.

Applicants Presentation – Jack Dostie stated he is requesting to establish a sport fishing charter business on a part-time basis to start then eventually it will become a full-time business upon his retirement. He is a registered Maine Guide and has a US Coast Guard license to carry passengers. He is requesting a

platform, dock, and shed to allow him a work area for servicing and storing equipment involved with this business and to be able to store it close to where his boat is. He emphasized this is to be a base of operations and not the business end of where things take place. He plans to meet clients at public boat launch sites which provide bathroom facilities. If Mr. Dostie could not meet clients at public boat launches, he would not go forward with this plan. Sport fishing is a clean and environmentally friendly way to increase the local economy.

Public Comment – Roger Royer, a resident of Gun Point Rd, introduced himself and stated he met with the applicant to go over the proposed plans, and he understands the initial intent of what Mr. Dostie is proposing. However, his concern is that the Board is setting a precedent by opening the door to any commercial venture thus losing their residential neighborhood. When he purchased his property, in his deed was a restriction to any trailers and commercial businesses; he is against any commercial business in this area.

Louie Pelletier a resident of Gun Point had some concerns regarding the proposal: 1) If this proposal is granted, could it be deeded to another owner? Chairman Alexander stated that should Mr. Dostie decide to sell, the new owner could continue the same type of operations on that property. 2) Could a new owner utilize that property in a much different way? Chairman Alexander stated that it could only be continued as a sport fishing business. 3) What size of an enterprise is Mr. Dostie proposing? Mr. Dostie stated it would only be as big as one man could handle. 4) Mr. Pelletier asked for clarification on what was allowed in a zone if it was not in the Commercial Fishing Zone. Papacosma explained that a proposal of this type could possibly be allowed if it's a marine related business. Planner Musson stated that the Commercial Fishing Zone was established to protect commercial fishing business. One issue the Codes Enforcement Officer asked MMA to determine was whether or not this type of business was related to commercial fishing. The MMA advised that it was, making it an allowed use in this zone. If this proposal was in a residential area, they would consider if it was a Home Occupation. 5) Mr. Pelletier wanted to know what kind of commercial uses could be proposed. Planner Musson stated that first someone would have to bring in a proposal and then determine whether or not it is an allowed use. Planner Musson also noted that if this particular proposal changes in anyway, Mr. Dostie would have to come back before the Planning Board.

Review and Vote on Section 15.3 of the Shoreland Zoning Ordinance Criteria –

15.3.1 – Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. Chairman Alexander stated that clients will be met at other sites, except for his own use, it doesn't appear there would be anymore foot traffic or erosion than already exists.

15.3.2 – Location shall not interfere with existing developed or natural beach areas. Chairman Alexander stated there were no beach areas, only ledge.

15.3.3 – The facility shall be located so as to minimize adverse affects on fisheries. Board found there to be no reason for adverse affects on fisheries.

15.3.4 – The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. Consideration was made concerning the width of the platform being larger than the 12' allowed in the Ordinance; it was determined for safety reasons to allow the 16' width. **Motion – Move to allow the applicant to construct a 16' x 16' platform. (Motion by Carrier and seconded by Weeman; carried 5-0)**

15.3.5 – No new structure shall be built on, over or abutting a pier, wharf, dock, or other structure extending beyond the maximum high water line of a water body, or within a wetland. Commercial fishing structure requiring direct access to the water as an operational necessity are allowed. Proposed shed is to be used in the operation of a commercial fishing business.

15.3.6 – No existing structure built on, over or abutting a pier, dock, wharf or other structure extending beyond the maximum high water line of a water body or within a wetland shall be converted to residential dwelling units in any district. Board found this to be non-applicable as there is no conversion of the existing residential structure proposed.

15.3.7 – Except in the Commercial Fisheries I District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the maximum high water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure. Board determined the proposed shed height to be approximately 9' x 8".

Motion – The Board moves to approve the proposal as meeting the requirements of section 15.3 of the Shoreland Zoning Ordinance. (Motion by Carrier and seconded by Weeman; carried 5-0)

Review and Vote on Section 15 of Site Plan Review –

Section 15.1 Dimensional Requirements - Applicant submitted a notarized statement from an abutter authorizing the sideline setback to be adjusted to her property line for this proposal. **Motion – The application meets the requirements of section 15.1. (Motion by Nannen and seconded by Alexander; carried 5-0)**

Section 15.2 Utilization of the Site. Planner Musson referred to the memo from the Codes Enforcement Officer allowing this proposal as an approved use. Chairman Alexander read section 15.2 and clarified that there would be no excavation at the site; timing of construction not an issue at this time; the big issue is the footpath down to the site. Mr. Dostie explained that they would like to put a flat rock path w/bark mulch between the rocks at a decent grade for comfortable walking. **Motion -The application meets the requirements of Section 15.2. (Motion by Carrier and seconded by Weeman; carried 5-0)**

Section 15.3 Adequacy of Road System – The applicant is not intending to meet clients on site, but off site. **Motion – The applicant meets the requirements of section 15.3 with the condition that clients are not met at this site and if the applicant decides to meet clients at this site, the applicant would need to go back before the Planning Board for an amendment. (Motion by Nannen and seconded by Weeman; carried 5-0)**

Section 15.4 Access into the Site – Mr. Dostie plans to improve the existing driveway and add an additional parking space for his own use. **Motion – The applicant meets the requirements of section 15.4 with the same condition of section 15.3 applying. (Motion by Alexander and seconded by Weeman; carried 5-0)**

Section 15.5 Access/Egress Way Location and Spacing – **Motion – The applicant meets the standards of section 15.5. (Motion by Carrier and seconded by Nannen; carried 5-0)**

Section 15.6 Internal Vehicular Circulation – **Motion – Section 15.6 does not apply to this proposal. (Motion by Alexander and seconded by Nannen; carried 5-0)**

Section 15.7 Parking – Parking is for residential use only. **Motion – The applicant meets the requirements of section 15.7 with the condition that no additional parking for commercial use is allowed on this site. (Motion by Weeman and seconded by Carrier; carried 5-0)**

Section 15.8 Pedestrian Circulation – **Motion – The Board finds this section not applicable to this proposal. (Motion by Alexander and seconded by Weeman; carried 5-0)**

Section 15.9 Stormwater Management – Mr. Dostie stated that he intends to plant shrubs along the ledges and along the property lines. **Motion – The applicant's proposal meets the requirements of section 15.9. (Motion by Papacosma and seconded by Weeman; carried 5-0)**

Section 15.10 Erosion Control - Nannen recommend other plants that Mr. Dostie might find useful to help control erosion. He also expressed concern over the steepness of the driveway and felt it's important that certain techniques be followed to help control erosion. **Motion – The proposal meets the requirements of Section 15.10 in particular that the path will wind down to the proposed site and not be straight. (Motion by Weeman and seconded by Carrier; carried 5 - 0)**

Section 15.11 Water Supply and Groundwater Protection – **Motion – The Board finds this section not applicable to this proposal. (Motion by Alexander and seconded by Carrier; carried 5-0)**

Section 15.12 Subsurface Waste Disposal – **Motion – The Board finds this section not applicable to this proposal. (Motion by Alexander and seconded by Carrier; carried 5-0)**

Section 15.13 Utilities and Essential Services – Mr. Dostie is proposing some outlets and spotlights; the electricity will come from the existing residential structure through a buried cable. One spotlight is proposed on either side of the shed and lighting the ramp coming up the float. Papacosma expressed concern of the spotlights being bright and affecting neighbors. Mr. Dostie mentioned that task lighting could be used and would work for him. **Motion – The proposal meets the standards of section 15.13. (Motion by Alexander and seconded by Nannen; carried 5-0)**

Section 15.14 Natural Features and Buffering - Mr. Dostie plans on planting shrubs and have been working on relocating small trees closer to the property line. **Motion – The applicant proposal meets the requirements of section 15.14 (Motion by Nannen and seconded by Weeman; carried 5-0)**

Section 15.15 Lighting – Nannen emphasized Papacosma comments and the idea of shielding the lights from neighbors and across the water is a good idea. Chairman Alexander made the motion with the condition that the principals of Section 15.13 and Section 15.15 are met. **Motion- The proposal meets the requirements of Section 15.15 with the applicant using task lighting or another form of lighting which will help minimize the affects on neighbors. (Motion by Alexander and seconded by Weeman; carried 5-0)**

Section 15.16 Water Quality Protection - Mr. Dostie stated that he would only store enough gasoline to run a small outboard motor and a quart of oil. **Motion - The application meets requirements of Section 15.16. (Motion by Carrier and seconded by Weeman; carried 5-0)**

Section 15.17 Hazardous, Special, and Radioactive Materials – **Motion – The Board finds this section not applicable to this proposal. (Motion by Alexander and seconded by Carrier; carried 5-0)**

Section 15.18 Solid, Special, and Hazardous Waste Disposal – Solid Waste will go to the Recycling Center. **Motion – The applicant has met the requirements of section 15.18. (Motion by Carrier and seconded by Weeman; carried 5-0)**

Section 15.19 Historic and Archaeological Resources – Mr. Dostie has mailed out notices to the local tribes and to date has not had any response. **Motion – The applicant has met the requirements of section 15.19. (Motion by Carrier and seconded by Weeman; carried 5-0)**

Section 15.20 Floodplain Management – **Motion – The applicant's proposal satisfies our requirements of section 15.20 with the condition the Codes Enforcement Office reviews the application and approves it. (Motion by Nannen and seconded by Alexander; carried 5-0)**

Section 15.21 Technical and Financial Capability – Letter of financial capacity has been submitted from Community Credit Union. **Motion - the application meets the requirements of Section 15.21. (Motion by Carrier and seconded by Weeman; carried 5-0)**

Motion – The applicant meets the requirements of section 15 of the Site Plan Review Ordinance with the conditions noted. (Motion by Alexander and seconded by Weeman; carried 5-0)

Section 13.4.7 of the Basic Land Use Ordinance - Musson indicated the Board may now want to review Section 13.4.7 of the Basic Land Use Ordinance and noted the Board may have already covered these elements by virtue of its previous review and approval of Section 15.3 of the Shoreland Zoning Ordinance and Section 15 of the Site Plan Review Ordinance. **Motion - The application meets the requirements of Section 13.4.7 of the Basic Land Use Ordinance. (Motion by Carrier and seconded by Papacosma; carried 5-0).**

Motion – The application for Jack Dostie is approved with conditions previously stated. (Motion by Weeman and seconded by Nannen; carried 5-0)

Chairman Alexander stated the appeals process; anyone wishing to appeal the decision of the Planning Board has forty (40) days from tonight to submit their request.

03-08-03 James Nesbitt et al, After the Fact Approval, Reconstruction of Non-Conforming Structure – Existing Structure was Removed and Replaced with New Structure; Commercial Fishing I, Tax Map 37-71, Long Point Road, Great Island, Harpswell.

Planner Musson handed out a memo from the Codes Enforcement Office dated September 11, 2003 to the Board and the applicant. He also explained to the Board there are two areas that need to be looked at 1) whether or not the structure has been replaced or reconstructed by more than 50% of the value of the structure; and 2) if the location of the existing structure meets the setback requirements to the greatest practical extent as stated in Section 10.3.2.2 in the Harpswell Shoreland Zoning Ordinance.

Applicant Presentation – James Nesbitt introduced himself as representing his family of four brothers whom own half of the property and his Uncle who owns the other half. He asked the Board what the technical sense of “Remove and Replace” as worded in the Planning Board Agenda for this hearing?

Board Comments – Nannen read section 10.3.2.2 of the Shoreland Zoning Ordinance and Papacosma clarified the issue was not literal removal as much as the value of the structure being increase by 50% of the fair market value. Mr. Nesbitt wanted the Board to have a clear understanding that they did not physically remove the building and replace it with a new one, but ended up replacing the existing structure through attempting maintenance.

Applicant Presentation - Mr. Nesbitt stated that last spring he and one of his brothers began much needed repairs on their camp. They began by jacking up the camp, leveling it off, putting new pads under it, and started the repair process. One of the abutters filed a complaint with the Codes Office and at that time they were made aware that they needed a permit to do the necessary repairs. The Codes Office issued a stop work order, which was displayed, and no further work took place. It is their desire to keep what they've had for the last 33 years. Mr. Nesbitt was concerned that it would be easier for the Board to look at this Ordinance and see a camp that's not on a foundation and move it verses a home that sits in a similar location on a foundation. Also, he feels this Ordinance has a gray area when you consider that if they had chose to replace 20% per year until it was done, they would not have needed a permit; but since they chose to do all the work at one time, this now causes them to be before the Planning Board. They intended to come before the Board and ask for a 30% expansion once the existing cottage was in better repair. The record reflects that the cottage was increased in size from 12' x 16' to 13' x 17'. It was not their intent to make the structure larger, all work that was done was in reaction to what was found as they worked along. They did use 2 x 6's in place of the existing 2 x 4's. Mr. Nesbitt requests that the Board allow them to continue work and also to keep the structure in the existing footprint. If the structure was required to be moved, it would place a burden on the family.

Public Comment – Howard Reiche a resident on Long Point wanted to know if the proposed request by the applicant was approved, would that allow him to use the property for commercial fishing (indicated on the Land Use Application as an alternate use) or would Mr. Nesbitt need to come back to the Planning Board for approval. Chairman Alexander stated that it would require Planning Board approval specifically addressing commercial fishing.

Board Comments- Papacosma asked Mr. Nesbitt to explain what the planned use of the structure would be. Mr. Nesbitt indicated it is not their primary residence, but used as a seasonal dwelling where they let people sleep in when there is an outhouse. He also indicated there is and has always been a 2nd story loft in the structure. Mr. Nesbitt commented that there is a dock on the cove side of their property, which they have used to fish off, but they have no intention to disrupt the neighborhood with a fishing business. After Mr. Nesbitt requested the Board approve their request, Nannen expressed that the Board can appreciate the attachment he has, but the Board is hampered to interpret the Ordinance without the benefit of sitting through the legislative process. The local Shoreland Zoning Ordinance is sent to the State for approval and compliance with State laws. The Board needs to satisfy the question, do you have the ability on the lot to locate the building elsewhere, and can it be made more conforming than it is.

Board Questions & Vote – Planner Musson recommended the Board determine whether or not more than 50% of the market value of the structure has been replaced. Mr. Nesbitt stated the assessed value of the structure is \$5,900.00 and the materials spent for the repairs were \$3,200.00. **Motion – Based on the evidence submitted by the applicant greater than 50% of the value of the structure has been replaced. (Motion by Weeman and seconded by Alexander; carried 5-0)**

Chairman Alexander proceeded to review the next step in determining whether the building relocation meets the setback to the greatest practical extent. Mr. Nesbitt stated that due to the size of the lot, the dwelling could be pushed back to the road or across the road. However, it would not be practical because the other side of the road is all ledges and erosion could be impacted. Mr. Nesbitt again asked the Board to consider moving the dwelling not practical. Nannen discussed the floodplain management and noted that was an issue for the Codes Enforcement Office to deal with. Also, Nannen feels that by moving back across the road, the water setback could be met and possibly the sideline setbacks as well. Alexander noted it would be helpful to know where the floodplain line was on this parcel for discussion purposes. The memo from the Codes Office stated the structure is currently within the 100-year floodplain. Mr. Nesbitt mentioned that if they

were to try and get the floodplain map amended, they would incur a cost of \$3,000 to \$4,000. Papacosma stated at this point the application is open for consideration for moving the structure to the most practical extent. The Board discussed the factors as outlined in section 10.3.2.1; *size of the lot* – Chairman Alexander stated the lot is large enough to allow for the structure to be relocated; *slope of the land* – Chairman Alexander doesn't see a problem with this issue, Mr. Nesbitt noted it would require lifting the structure up 12'-15' and the removal of some trees; *soil erosion* – would depend on how it was moved and how it was placed; *location of other structures* – no other structures on the applicants lot; *location of septic and other on-site soils* – currently no septic system, soils untested – Mr. Nesbitt noted it would be their preference to use a fully contained tertiary system with recirculation of all water waste instead of putting it into the soils – Papacosma indicated as long as it was an approved use; *type and amount of vegetation to be removed* – Chairman Alexander noted the area across the right-of-way mostly contained spruce trees – Mr. Nesbitt showed the Board an aerial photo of the effects of removing large amount of trees on properties located next to them. **Motion – The application does not meet the requirements of section 10.3.2.2 Reconstruction and Replacement because the structure location does not meet greatest practical extent setbacks due to the size of the lot which would permit the structure to be moved to be less non-conforming. (Motion by Alexander and seconded by Carrier; carried 5-0)**

Applicant's Comments – James Nesbitt emphasized again that he feels that because their dwelling is on pilings instead of a foundation, that that is influencing the Board. Bob Nesbitt stated their intention is to have a camp on the water. The camp has been there over 30 years and because they erred in making the repairs they find themselves in this situation.

Planner Musson stated that the Board did not need to review section 13.4.7 of the Basic Land Use Ordinance. Musson also explained to the applicant the appeal process, stating they have 40 days from tonight's hearing to file an appeal.

03-08-04 Richard Pollock, Reconstruction of Non-Conforming Structure – Reconstruct Garage and Slab on Existing Footprint; Interior, Tax Map 16-476, Intervale Road, Harpswell.

Applicant Presentation – Mr. Pollock explained to the Board his desire to tear down the existing garage which is in disrepair, have a concrete slab poured, and rebuild the structure on the same footprint. It would be rebuilt to the current dimensions and overall design. Anticipated changes are the concrete slab, eliminating the hip of the roof, siding with shingles, and not replacing the brick chimney.

Planner Musson noted the structure is non-conforming due to the sideline setbacks, and the width of the lot does not give the applicant room to move to either side.

Board Discussion – Chairman Alexander noted that at the Site Visit he would not recommend moving the structure south due to the utility pole location on the property. Mr. Pollock clarified the distance of the garage to Intervale Road as being approximately 80'. The Board agreed that the structure would be destroyed more than 50% of the fair market value. The Board discussed the factors as outlined in section 10.3.2.3 of the Basic Land Use Ordinance; *size of the lot* – Chairman Alexander stated the lot is narrow and doesn't see any practical location to move the structure; *slope of the land* – Chairman Alexander noted the lot was level; *soil erosion* – does not change with this proposal; *location of other structures* – no other structures on the applicants lot, by moving it north it would move the structure away from an abutters structure; *location of septic and other on-site soils* – no septic system involved in the proposal; *type and amount of vegetation to be removed* – one tree limb would be removed. **Motion – The application to replace the garage meets the setbacks to the greatest practical extent. (Motion by Weeman and seconded by Alexander; carried 5-0)**

Planners Updates-

Musson noted the upcoming October Site Visit falls on a holiday, October 13th, he proposes to move the Site Visit to Wednesday, October 8th the week before due to the closure of Mountain Road the week of the 13th, and adjust the time due to it getting darker earlier in the evenings. *Next site visit set for 4:00 pm on Wednesday, October 8th.*

Next months meeting is planned to be held at the Town Office in the new meeting room.

Musson requested to schedule a Planning Board Workshop to discuss the Comprehensive Plan as well as other issues. Musson will schedule and notify the Board members of the date, time, and location.

Adjournment - Motion to adjourn at 9:30 P.M. (Motion by Alexander and seconded by Carrier; carried 5-0)

Respectfully submitted,

Amy E. Ferrell
Planning Assistant